

IN THE HIGH COURT OF ORISSA AT CUTTACK

R.S.A. No.177 of 2018

Prafulla Kumar Mahakud

...

Appellant

Mr.S.K. Nayak-2, Advocate

-versus-

Bhamamani Nayak & Others

...

Respondents

CORAM:

MR. JUSTICE D.DASH

ORDER

23.06.2022

Order No.

04. 1. This matter is taken up through hybrid arrangement (virtual/physical mode).

2. In this Appeal under section 100 of the Code of Civil Procedure (for short, 'the Code'), the Appellant assails an order dated 10.01.2018 passed by the learned District Judge, Bhadrak in R.F.A. No.02/2011.

By the said order the application filed by the present Appellant under section 5 of the Limitation Act for condonation of delay in filing the Appeal under section 96 of the Code challenging the judgment and decree passed by the learned Civil Judge (Junior Division), Bhadrak in T.S. No.174 of 1994 whereby the Appellant and his father as the Plaintiffs have been non-suited, has been rejected.

3. Learned counsel for the Appellants submits that the Appellant was the one of the Plaintiffs in the original suit filed before the Trial Court and the suit being dismissed by judgment and decree dated 15.07.2006 and 28.07.2006 respectively, the Appellant being ill remaining under medical treatment of the Doctors as also those attached to the Clinic & Treatment Centre

for Mind & Nervous Diseases, Purighat Road, Cuttack, could not prefer the Appeal in time. He submitted that on recovery from the illness, the Appellant presented the Memorandum of Appeal on 17.01.2011 and in the process there has been delay of 1515 days (four years one month and twenty five days). He further submits that said delay was neither intentional nor deliberate and it was because of unavoidable circumstances standing on the way of the Appellant and therefore being not able to take timely step in questioning the judgment and decree passed by the Trial Court, he approached the First Appellate Court late. In support of the same, he having filed the treatment card issued by the Clinic as afore-named, which is taken on record has invited the attention of the Court to the same.

He submits that the First Appellate Court should have made liberal approach in the matter as it concerns with the right, title and interest of the Appellant in respect of the land in question and under the circumstance which was beyond the care and control of the Petitioner when he had no fault in the matter of not approaching the Court in time and it was because of his mental illness, the Lower Appellate court ought to have allowed the application holding that the Appellant was prevented by sufficient cause in not filing the Appeal in time. He submits that the Court below has rejected the application simply taking into account of the long period and ignoring the fact that the Appellant has nothing to gain in approaching the Court late. He thus contended for admission of the Appeal to answer the above as the substantial question of law.

4. Keeping in view the submissions made, I have carefully gone through the order impugned in this Appeal.

5. The Appellant and his father were the Plaintiffs before the Trial Court in Title Suit No.174/94. The Judgement in the suit has been passed on 15.07.2006 and the decree has been drawn up on 28.07.2006. The father of the Appellant who was the Co-Plaintiff has not filed any Appeal in challenging the judgment and decree whereby he and the Appellant have been non-suited.

The Appellant has filed this Appeal after the delay of 1515 days. It is stated that he was mentally ill and being under treatment in a clinic at Cuttack was prevented from filing the Appeal in time. The document in support of the illness and treatment of the Appellant shows that the Appellant was regularly taking medicine in that card. It has been clearly stated that the Appellant being given the medical advice was following and the concerned doctor was directly communicating with the Appellant. The document does not reveal that the Appellant even at any given point of time during all these periods was totally not in a position to communicate and he was under the care and custody of someone else being wholly incapacitated from doing his normal day to day activities. In fact, the document which is produced before this Court, had not been filed before the First Appellate Court and, therefore, its too does not appear to be free from suspicion.

It is true that in the matter of condonation of delay, the Court should make a liberal approach and instead of disposal on technical ground, the disposal on merit is to be preferred. But at the same time caution remains that when for the inaction of a party for a long period, a right has accrued in favour of the successful party in the litigation, the Court has also make a balance between the two and also take into account the

sufferings and hardship that the successful party in that event would face as also the consequences befalling thereby.

In the given case, the delay is for a period of more than four years and the judgment and decree passed in the suit which are sought to be annulled have attained finality insofar as the father of the Appellant, who is the Co-Plaintiff is concerned, who in fact has surrendered to the same and he in fact is said to have succeeded to it on the death of his father. The explanations in support of the sufficient cause preventing the Appellant to approach the Court in time and after lapse of long period of more than four years do not appear plausible.

Therefore, this court is not in a position to find out any reason and justification to take a view different from what has been taken by the Lower Appellate Court that the Appellant has not been able to show that he was prevented by sufficient cause in not filing the Appeal in time but after long lapse of four years one month and twenty five days.

6. In the wake of aforesaid, this Court is not inclined to admit the Appeal in saying that there stands the substantial question of law for being answered.

7. Hence the Appeal stands dismissed. No order as to cost.

(D. Dash)
Judge